In the High Court of Judicature at Madras

Dated: 24.02.2006

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Civil Revision Petitions (NPD) No.170 and 171 of 2003

N.Gnanambal ..Petitioner in both revision petitions/Landlord

..vs..

1. S.Murugesan
2. R.Chander ..Respondent in both revision petitions/Tenant

Civil Revision Petitions filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control), Act 1960, as amended by Act 23/73 and by Act 1/1980, against the Order dated 15.04.2002 in R.C.A.No.755 and 133 of 1998 on the file of VIII Judge, Small Causes Court, Chennai reversing the order dated 12.08.1998 in RCOP.No.1509 of 1996 on the file of XIV Judge, Small Causes Court, Chennai respectively.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.V.Ayyadurai

COMMON ORDER

Landlady is the revision petitioner in both the revision petitions, arising out of the common order dated 15.04.2002 passed in R.C.A.No.755 and 133 of 1998 by the VIII Judge, Small Causes, Court, Chennai, which themselves were preferred against the order dated 12.08.1998 passed in R.C.O.P.No.1509 of 1996 by the XIV Judge, Court of Small Causes, Chennai.

2. The rent control original petition was filed under sections 10 (2)(i) and 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, for eviction on the ground of wilful default and subletting. The learned Rent Controller ordered eviction only on the ground of subletting. Even that order of eviction was set aside in R.C.A.No.755 of 1998 preferred by the tenants. R.C.A.No.133 of 1998 was preferred by the landlady against the finding that there was no wilful default and that appeal was dismissed. Upon the dismissal of both the grounds, these revision petitions are separately filed by the landlady.

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3. The issues before us are as to (i) whether there is wilful default in payment of rent for the months of March, April and May 1996? and (ii) whether there was subletting made by the tenant?

4. Regarding subletting, the law under section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, is as follows:

> "(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is specified-
>
> (ii) that the tenant has after the 23rd October, 1945, without the written consent of the landlord-
>
> (a) transferred his right under the lease or sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so, or...."

5. Although there was no lease agreement in between the parties, there is a letter through Ex.P-7 purported to have been written by the tenant in favour of the landlord on 21.03.1985; whereby it is found that

> "I shall not use the shop for any other business except for the show room for sale of cool drinks and shall not store any inflammable or hazardous goods in the shop let out to me..... I shall not sublet the shop or convert or any alteration without your written consent....."

Even though the truthfulness in execution of such letter was denied by the tenant, it can be relied upon inasmuch as some portion of the letter was found in the handwriting of the tenant himself. According to the above contents of the said letter, the tenant is forbidden from subletting without the consent of the landlady.

6. Mr.V.Ayyadurai, learned counsel for the tenant submitted that there is no subletting in this case. The evidence on record do show that originally the first respondent was running a cool drinks shop in the tenament and subsequently, he has entered into a partnership deed with one Chander, the second respondent, whereby the partnership firm began to run a STD booth in the tenament. Whether this will amount to subletting is a question before us.

7. The learned counsel for the first respondent / tenant relied upon M/s.BENTOOL STEEL PRODUCTS PVT.LTD., REP.BY ITS MANAGING DIRECTOR., G.K.PATTERY ..vs.. O.M.A.MOHAMMED OMAR AND ANOTHER (2001(3) CTC 618), HELPER GIRDHARBHAI ..vs.. SAIYED MOHMAD MIRASAHEB KADRI AND OTHERS (1987(3)SCC 538) and P.SENNIAPPAN ..vs.. KANNAMMAL (1998 (1) CTC 537).

8. In the above cases cited on the side of the tenant, it has been

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clearly mentioned in 1998(1) CTC 537 that when tenant had permitted third party also to use the building, then there was no sub-letting. It was held in 1987(3) SCC 538 that tenant becoming a partner of a partnership firm and allowing the firm to carry on business in the demised premises while himself retaining legal possession thereof, it was held that it does not amount to subletting; similarly in 2001(3) CTC 618, it was held that in order to prove subletting, it must establish (i) that third party sub tenant paid the rent to tenant; and (ii) that tenant had no control over that part of premises, which is in occupation of sub tenant. But the facts of the case show that there was no exclusive possession by the sub-tenant, namely, the partnership firm, because the first respondent himself as a partner to the said firm continued in possession. There is also no question of payment of rent by partnership firm in favour of first respondent.

9. Placing reliance upon the case law JOGINDER SINGH SODHI ..vs.. AMAR KAUR ((2005) I SCC 31) by landlady is of no use because in that case, sub-tenant was shown to be in exclusive possession so as to observe that there was sub-lease. But in this case, the second respondent was not found in exclusive possession. 1987(3) SCC 538 alone is applicable to the present facts of the case. So, no sub-letting was established.

10. So far as the wilful default in payment of rent is concerned, to say that there was an understanding between the parties as if once in three months, rent is to be paid is not correct. This is so because in Ex.P-7 letter, the following is found:

> "I shall pay regularly the monthly rent and electric current charges payable for English calendar month on the first day of the succeeding month without fail.

This letter was written in 1985. R.C.O.P.No.1509 of 1996 was filed on 10.07.1996. The rent for March, April and May, 1996 was said to have been sent by money order on 11.07.1996 through its coupon Ex.P-3. But in that coupon, it was mentioned by the tenant as if he is sending the rent through the same for the months of April, May and June 1996. First of all, sending three months rent in one money order coupon will by itself show that there was earlier default for the two prior months. Secondly, the rent actually sent through Ex.P-3 was April, May and June 1996, whereby the rent for March remains unpaid. An explanation was offered by the tenant as if it was mistakenly written in the coupon as rent of April, May and June; but it was meant only for March to May 1996. It is not the case of tenant that the rent for the month of June was already paid. So, the rent for March or June 1996 remains unpaid. While four months rent is due, Ex.P-3 shows only payment for three months. Therefore, whether it is March 1996 or June 1996, one month rent is found to remain unpaid since 1996. It is very strange as to how both the authorities below found on fact that there

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was no default, much less, wilful default.

11. Learned counsel for the first respondent / tenant has submitted that when once both the authorities below concurred together on facts, this Court may not interfere in the said factual finding. But the learned counsel for the landlady cited a decision reported in 2004(4) CTC 286 (M.VELMURUGAN ..vs.. P.SRINIVASAN, which, after relying upon the judgment rendered by Supreme Court in P.S.PAREED KAKA AND OTHERS ..vs.. SHAFEE AHMED SAHEB (2004(2) CTC 364), held as follows:

> "It is also to be remembered that the Honourable Supreme Court in the decision reported in P.S.PAREED KAKA AND OTHERS .. vs.. SHAFEE AHMED SAHEB (2004(2) CTC 364): 2004(5) SCC 241 held that the High Court has jurisdiction to go into the legality or correctness of the decision, which includes the power to appreciate evidence and that the High Court can interfere with the finding of fact also. The examination as to the correctness involves appreciation of evidence and that the High Court can interfere with the finding of the Rent Controller is entirely improbable".

12. Even in the decision reported in 2004(5) CTC 338 (MANGALAMBAL ..vs.. ANJALI DEVI), findings of fact are interfered with in a revision filed by the landlady. So, this Court is competent to interfere with the perverse finding even it was made by both the authorities below.

13. In this case, as I mentioned earlier, one month rent of March or June 1996 remains unpaid. What the learned counsel for the tenant submitted is that there can as well be a direction for the tenant to deposit or pay the said rent, which cannot be done here, because it is obligatory on the part of the tenant to pay the rent every month on the next succeeding month without any prompting either by this Court or by the learned Rent Controller or even by the landlady by reminding the tenant through the issuance of notice on demand of rent. The tenant has a statutory obligation to pay the rent suo motu.

14. Learned counsel for the first respondent / tenant drew my attention to the following explanation to the proviso to Section 10(2)(ii)(a) of the Act is as follows:

> "Explanation:- For the purpose of this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months notice by the landlord claiming the rent".

15. It is only a legal construction about wilful default in case if the tenant fails in payment or tender of rent even after the

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issuance of two months notice by the landlady claiming the rent. That is not a prior condition before ever a petition for eviction on the ground of wilful default is filed. As mentioned supra, it is obligatory on the part of the tenant, in accordance with the contractual terms, to pay the rent within two weeks of the succeeding English Calendar month.

16. To show that on similar occasions default was considered as wilful, the following case laws were cited on behalf of the landlady.

(2004)2 M.L.J.576 (SUBAM MEDICALS ..vs..DR.(MRS.) ZUBAIDA BEGUM
2004-4-L.W.526 (A.S.K.VENKATACHARY ..vs.. M.MEERAN SAHEB)
2004-3-L.W.361 (C.T.MEYAMMAI ..vs..S.MOHAMED KAMIL, PROPRIETOR FASHION 'N' STYLE)
1994-2-L.W.524 MOHAMED ROWTHER ..vs.. S.S.RAJALINGA RAJA AND TWO OTHERS;

17. The subsequent enhancement of rent may not also be a ground in favour of the tenant because no rent will remain unaltered for decades together and enhancement parallel to inflation is after all justifiable and one cannot take anything adverse to the landlady from that fact of subsequent enhancement of rent. No motive could be attributed on this aspect against the landlady.

18. Since the rent of one month is not paid for ten years and since rent for three months Ex.P-3 was shown to have been paid only on the particular day just prior to preferring of rent control original petition, I find it a wilful default on the part of the tenant. Hence, the findings given by both the authorities below are liable to to be interfered with.

19. For the reasons mentioned above,

(i) C.R.P.(NPD) No.171 of 2003 is dismissed, confirming the order passed in R.C.A.No.133 of 1998 to the effect that there is no sub-letting proved.

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(ii) C.R.P.(NPD) No.170 of 2003 is allowed, reversing the order passed in R.C.A.No.755 of 1998. There shall be an order of eviction based on the ground of wilful default in payment of rent. Time for eviction six months.
No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

gl

To

The Registrar,
Small Causes Court,
Chennai.

+4ccs to M/s. R.Manickavel & Associates Sr 8996 & 8997, 5246 and 5247

TEJ (CO)
km/20.3.

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